

**Congress of the United States**  
**Washington, DC 20515**

February 20, 2003

The Honorable Colin Powell  
Secretary of State  
2201 C Street NW  
Washington, DC 20520

Dear Mr. Secretary:

I am writing you in response to a February 14, 2002 letter I just received from Assistant Secretary for Legislative Affairs Paul Kelly, responding to my November 14, 2002 letter to President Bush regarding Pakistani assistance to the North Korean nuclear program.

While I appreciate receiving Assistant Secretary Kelly's response to my inquiry, it really fails to address the fundamental questions I raised in my letter to the President. In particular, what actions the Administration plans to take in response to Pakistan's covert assistance to a North Korean nuclear program that has flagrantly violated the Nuclear Nonproliferation Treaty and other international agreements. As you know, U.S. law provides for a range of sanctions to be applied to countries that, like Pakistan, have aided a non-weapons state in acquiring the materials or technology for a nuclear weapon. Based on Assistant Secretary Kelly's response, I still cannot determine whether the Administration intends to apply or waive applicable nonproliferation sanctions for Pakistan.

As you know, during Deputy Secretary Richard Armitage's testimony to the Senate Foreign Relation Committee on February 4, Senator Chuck Hagel (R-NE) asked about the extent of the assistance received by North Korea from Pakistan. Mr. Armitage replied, "We know it's both ways, and we know a good bit about a North Korean-Pakistan relationship. I, myself, however, have had conversations, personal, direct, with [Pakistani] President Musharraf, who has assured us these are over and they were in the past." This is a striking admission that Pakistan has supplied nuclear technology to North Korea in the past, and that Pakistan's President Musharraf was aware of such transfers. As detailed in my letter to the President, U.S. law is clear on the application of sanctions on countries that proliferate or aid in the proliferation of nuclear technology.

In Assistant Secretary Kelly's response to my letter, he indicated that "President Musharraf assured [you] that Pakistan is not participating in any proliferation activity and there will be no arms-related contacts between Pakistan and North Korea." Assistant Secretary Kelly goes on to say that "we will continue to watch the situation closely."

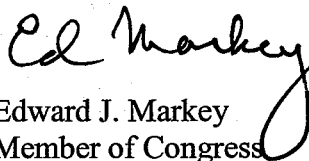
This begs the question of when sanctions will be applied or waived. The law is quite clear on this matter, and is quite clear that sanctions will apply unless and until they are lifted by Presidential waiver. There is no statute of limitations on these sanctions; they must either be applied or waived, and the decision to do either should be announced publicly.

Accordingly, I respectfully request your assistance in providing prompt responses to the following questions:

1. Given Deputy Secretary Armitage's testimony and Assistant Secretary Kelly's seeming admission that the United States is aware of actions by Pakistan which appear to be in direct violation of U.S. nonproliferation law, when and to what extent will the sanctions required by Sections 101 and 102 of the Arms Export Control Act (the Symington and Glenn amendments) and Section 2(b)(4) of the Export-Import Bank Act be applied?
2. The aforementioned statutes provide the President with waiver authority, if he certifies in writing "(A) the termination of such assistance would have a serious adverse effect on vital United States interests; and (B) he has received reliable assurances that the country in question will not acquire or develop nuclear weapons or assist other nations in doing so" (the Symington Amendment), "that the imposition of such sanction would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security" (the Glenn Amendment), and "that (I) reliable information indicates that (aa) such person has ceased to aid or abet any non-nuclear-weapon state to acquire any nuclear explosive device or to acquire unsafeguarded special nuclear material; and (bb) steps have been taken to ensure that the activities described in item (aa) will not resume; or (II) the prohibition would have a serious adverse effect on vital United States interests" (Section 2(b)(4) of the Export-Import Bank Act). Has the President made a determination to exercise such waiver authority? If so, when was such waiver authority exercised? Were any sanctions imposed prior to the exercise of such waiver authority? If not, why not? If so, what sanctions were imposed? If waivers have been or will be issued, please explain the legal and policy basis for waiving sanctions in this instance.
3. Section 823 of the Nuclear Proliferation Prevention Act of 1994 requires that the United States "oppose any use of the [international financial] institution's funds to promote the acquisition of unsafeguarded special nuclear material or the development, stockpiling, or use of any nuclear explosive device by any non-nuclear-weapon state," where international financial institution is defined in section 701(a) of the International Financial Institutions Act (22 U.S.C. 262d(a)). What steps has the United States taken to ensure that no funds available to Pakistan through such institutions have been or will be used by Pakistan to assist North Korea in gaining access to nuclear weapons technology?

Thank you for your assistance and cooperation in providing prompt responses to these questions. I would appreciate your response to these questions by February 28, 2003. Please have your staff contact Dr. Benn Tannenbaum or Mr. Jeffrey Duncan of my staff at (202) 225-2836 if you have any questions about this request.

Sincerely,

  
Edward J. Markey  
Member of Congress